

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

ARANDELL CORPORATION, *et al.*,

Plaintiffs

v.

XCEL ENERGY INC., *et al.*,

Defendants.

Case No.: 07-C-0076-C

**MOTION TO RECONSIDER ORDER
GRANTING JURISDICTIONAL DISCOVERY**

On April 3, 2007, Plaintiffs filed a Motion for Jurisdictional Discovery that failed to apprise the Court of controlling Seventh Circuit authority requiring a *prima facie* showing of jurisdiction *before* a plaintiff may conduct jurisdictional discovery. By letter dated March 29, 2007 (before Plaintiffs filed their discovery motion), Defendants alerted Plaintiffs to the controlling law and asked that they make the required *prima facie* showing or explain why this Seventh Circuit authority did not apply. Decl. of Joel Kleinman, Ex.A. Plaintiffs did neither, and instead filed their motion without advising the Court of this threshold requirement. Defendants intended to file a brief advising the Court of the controlling authority and opposing the Plaintiffs' motion. Absent any local rule, order, or briefing schedule to the contrary, the Moving Defendants believed their response was due April 24, 2007, 21 days from the filing of

Plaintiffs' motion.¹ Before Defendants filed their brief, the Court granted Plaintiffs' motion for jurisdictional discovery.²

Because an opposition brief would now be moot, Specially Appearing Defendants American Electric Power, Inc., AEP Energy Services, Inc., CenterPoint Energy, Inc., CMS Energy Corporation, CMS Energy Resources Management Co., Cantera Natural Gas, LLC., Duke Energy Carolinas, LLC, Duke Energy Trading and Marketing, LLC, Dynegy Inc., Dynegy G.P. Inc., DMT Holdings, L.P., ONEOK, Inc., and Reliant Energy, Inc. (collectively, the "Moving Defendants") respectfully ask the Court to reconsider its April 17 Order, in light of governing Seventh Circuit law that requires Plaintiffs to make a *prima facie* showing of jurisdiction before conducting jurisdictional discovery. Both the Complaint and discovery motion demonstrate that Plaintiffs cannot meet their jurisdictional burden.

¹ Although the Court typically sets an accelerated briefing schedule for discovery motions in its order following the preliminary pretrial conference, no such order has been entered in this case. Moreover, the Moving Defendants do not believe that Plaintiffs' motion is a discovery motion to which the order would apply. Instead, the motion, at least if decided in the Moving Defendants' favor, is actually a dispositive motion that will decide the question of personal jurisdiction, given Plaintiffs' inability to make even a *prima facie* showing of jurisdiction over any of the Moving Defendants.

² By failing to frame the legal issue correctly, Plaintiffs' discovery motion implies that the only dispute is how much jurisdictional discovery Plaintiffs get, not whether they are entitled to it at all. For example, Plaintiffs state in their motion:

Plaintiffs . . . hereby move the Court (i) for an order permitting the plaintiffs to engage in discovery relating to personal jurisdiction for a period of 120 days; and (ii) for an order setting a briefing schedule

. . . .

In so moving, Plaintiffs certify that they have in good faith conferred with defendants in an effort to stipulate to jurisdictional discovery without seeking the intervention of the Court, but have not been able to reach an agreement with the defendants on this issue.

Mot. at 1. This language suggests that the only dispute is as to the timing of discovery, when in fact Moving Defendants have consistently maintained that Plaintiffs have not met their burden justifying discovery in the first instance. See Decl. of Joel Kleinman, Ex.A.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of April, 2007, a copy of the Moving Defendants Motion to Reconsider Order Granting Jurisdictional Discovery, supporting memorandum, and supporting declaration of Joel Kleinman was served by first-class U.S. Mail on the attorneys listed on the service list.

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